

February 17, 2006

Walter D. Cruickshank
Acting Director, Minerals Management Service
Minerals Management Service
U.S. Department of the Interior
Attention: Amy C. White, RPT
381 Elden Street, MS--4024
Herndon, CA 20170-4817

Dear Mr. Cruickshank:

On behalf of the Oceans Public Trust Initiative (OPTI), a Portland, Maine based project of the International Marine Mammal Project of Earth Island Institute, I am writing to comment on the Advance Notice of Proposed Rulemaking (ANPR) regarding the renewable energy development program for the Outer Continental Shelf (OCS). OPTI's mission is to ensure that the public trust interest in ocean and coastal areas is fully protected by state and federal governments. We appreciate the opportunity to provide our recommendations to the Department of the Interior (DOI) on the ANPR.

Since the early 19th Century, the courts have established that valuable marine environment areas must be protected by their government overseers for the general benefit of the public. Because Congress has entrusted the oversight of the marine environment of the OCS to DOI, the Department has the duty, under the public trust doctrine, to pay particular attention to environmental concerns and to the public interest in general. As it moves forward with the development of an offshore renewable energy regulatory program, DOI must give this rule the highest priority.

OPTI believes that in order for DOI to fulfill its management responsibility for the public resource of the OCS, it must fully engage with the public regarding development concerns, adopt an environmentally cautious approach to development, develop comprehensive regulations and ensure that its program standards, guidelines and regulations are applied to each and every project universally. Each of these important points is outlined in more detail below.

OPTI also believes that it is essential that an underlying regulatory framework is in place first before individual projects are considered. Ocean management has for far too long been left to ad hoc decision-making and development agendas driven by profit-making motives. As important as renewable energy is to this country's energy and environmental future, there is little to be gained and much to be lost from the rushed review of projects without first establishing the decisional criteria and a reasonable approach for review that results in environmentally-sound decisions. A perfect example of this problem is presented by the fact that the largest project in the world is being considered for Nantucket Sound in the absence of such a program. We must look before we leap.

OPTI's comments are broken down into five general areas, as follows:

Public Participation

The OCS is a valuable public trust resource and DOI's consultation provisions should reflect the fact that offshore energy projects have the potential to significantly impact that resource. DOI should pursue consensus in support of program activities and abandon areas recommended for exclusion. DOI should also establish public consultation procedures from at least two stages of review. First, consultation is critically important during the programmatic review of specified areas. Second, a detailed review opportunity should be provided on individual projects. Furthermore, given the importance of coastal resources to a tremendous number of people, and the environmental, economic and visual impacts at issue, DOI should define "interested" or "affected" parties broadly. Through this approach, MMS will be better positioned to account for and balance the public interest in OCS resources.

Comprehensive Programmatic Review of Resources

The Department should undertake a comprehensive and programmatic review of OCS resources that would establish a land use authorization framework to protect the marine environment and aid in subsequent decisions. The Bureau of Land Management recently completed a similar review for onshore wind energy projects on its lands. The United Kingdom (UK), a leader in offshore wind energy, also began the development of its offshore wind program by completing a programmatic review, assessing the adequacy of sites from a programmatic perspective and setting standards and requirements before evaluating specific projects. DOI should do the same.

The Department must undertake a comprehensive and programmatic review of OCS resources based on ecosystem management, including an assessment of power potential, habitat use by marine life, and the presence of historical, recreational, and cultural sites, public safety issues. Like the BLM and the UK, MMS should use the review to identify areas that have high potential for development, as well as those that should be treated as "exclusion zones"; that is, off-limits to development based upon environmental concerns, resource management conflicts, or other public interest issues. This program should be undertaken in close consultation with the environmental community, affected states, local

governments, and Indian tribes, as well as through public notice and comment. This review is essential if the public trust nature of ocean and coastal areas is to be adequately protected.

Standard-Setting Regulations

Regulations under the DOI program for OCS development should set standards for renewable energy projects. These standards must be rigorous. There is no reason renewable energy projects should be treated more leniently than other offshore development activities. They should include requirements for independent environmental assessments; best management practices and best impact mitigation practices, as well as ongoing monitoring and funded decommissioning plans.

DOI is ultimately responsible for the objectivity of any environmental review and, by regulation, must select impartial and qualified contractors to conduct required environmental studies. To ensure unbiased assessments, all environmental studies should be conducted by independent third-party contractors selected according to the procedures set forth by the Council on Environmental Quality.

A requirement that facilities implement best management practices and best impact mitigation practices, and ongoing safety and environmental monitoring makes practical sense. It is also supported by recent BLM decisions regarding onshore wind energy development programs and by decisions of the UK, which has years of experience in addressing offshore wind development issues.

Finally, requiring funded decommissioning plans for each project is a regulation which looks to the future of the OCS. In reality, no one really knows what the working lifespan of an industrial-sized alternative energy complex is, particularly on the OCS. By requiring applicants to supply bonds for the full decommissioning costs of these massive projects, DOI, and ultimately the public, will not be landed with the huge expense of addressing this issue in the future, and the OCS will not be littered with industrial energy wrecks.

Mandating Consistent Applications of Regulations

OPTI supports offshore wind and other OCS renewables when developed through a proper program based on sound and comprehensive ocean governance but only if that program is applied equally to all projects, regardless of when a project was proposed.

Allowing energy companies to avoid proper oversight and to cherry-pick the most profitable location for their projects without regard to whether those locations make the most sense from a public interest perspective is inconsistent with DOI's duty to manage OCS development in a responsible manner. That appears to have been the approach followed in previous years under the ill-advised, illegal and poorly conducted Corps of Engineers' program for projects like Cape Wind and LIPA. Hopefully, DOI will not repeat these errors and will follow a more prudent course based on environmental considerations. DOI cannot adequately assess and authorize any energy projects on the OCS before the Congressionally mandated program is in place on which proper siting decisions can be based. As such, large-


scale development projects on the OCS, whether from offshore wind, wave, LNG, or oil and gas support facilities, should not be approved without first establishing comprehensive programs that are based upon ecosystem-management principles and broad-based standards to protect the environment.

Conclusion

The Ocean is first and foremost a public trust resource. Public interest, not private gain, must be the focus of the DOI as it establishes a management approach for OCS renewable energy development. The public interest will best be served if: 1) DOI develops tough national requirements; 2) DOI conducts a programmatic review of the OCS resources under its new guard and, like the UK, strategically approaches siting of energy facilities with regard for the environmental sensitivity of locations; 3) DOI allows public participation throughout the development of the OCS management program; and 4) DOI holds individual energy projects to the standards and regulations of its formal development program, without exception. While this approach will require a measured and careful approach at the current time, it ultimately will establish a reasonable and expeditious approach for this program that facilitates and expedites offshore renewable energy without sacrificing environmental values or abdicating the duty to protect the public trust.

We value the opportunity to present our concerns and comments. Thank you for your consideration of these important issues. Please note that my contact information has changed to the following: Oceans Public Trust Initiative, 139 William St. #1, Portland, ME. 04103 and phone (207) 774-2925.

Sincerely,



Cindy Lowry
Director